



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

OCT 12 2007

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8153

Robert Levine, Chief Financial Officer  
Oxisolv, Inc.  
14916 Telegraph Road  
Suite 6  
Flat Rock, Michigan 48134

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0001

Dear Mr. Levine:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on October 12, 2007 with the Regional Hearing Clerk.

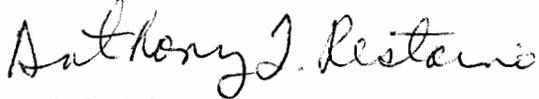
The civil penalty in the amount of \$300 is to be paid in the manner prescribed in paragraphs 33 and 34. However please be advised that the address to send your payment has been changed and the new address is:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Please be certain that the number **BD** 2750845P001 and the docket number are written on both the transmittal letter and on the check. Payment is due by November 13, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

*for* 

Joseph G. Lukascyk  
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. <u>FIFRA-05-2008-0001</u></b>
	)	
<b>OXISOLV, INC.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>FLATROCK, MICHIGAN 48134</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
	)	<b>Act, 7 U.S.C. § 136l(a)</b>
<b>Respondent.</b>	)	
<hr/>		

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Chief of the Chemicals Management Branch, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Land and Chemicals Division, U.S. EPA, Region 5.

3. Respondent is Oxisolv, Inc. (Oxisolv), which is, and was at all times relevant to the alleged violations, a corporation organized under the laws of the State of New Jersey, with a place of business located at 14916 Telegraph Road, Suite 6, Flat Rock, Michigan 48134.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

**Statutory and Regulatory Background**

10. The term “person” is defined as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

11. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver.” Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

12. The term “pesticide” is defined as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Section 2(u) of FIFRA, 7 U.S.C. § 136(u); 40 C.F.R. § 152.3.

13. A pesticide is “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

14. According to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

#### **Factual Allegations and Alleged Violations**

15. Respondent was, at all times relevant to this Complaint, a “person” as that term is defined in Section 2(s) of FFRA, 7 U.S.C. § 136(s).

16. Respondent did, at all times relevant to this Complaint, “distribute or sell” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

17. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

18. On October 9, 2002, an inspector employed by the Michigan Department of Agriculture (MDA), conducted an authorized inspection at Oxisolv, located at 12055 Universal Drive, Taylor, Michigan 48180.

19. During the October 9, 2002 inspection, the MDA inspector reviewed and collected from Oxisolv, a documentary sample of the label for the pesticide product “**OXISOLV WATER TREATMENT MICROBIOCIDE,**” EPA Reg. No. 6836-79-072156.

20. The MDA inspector issued a “Receipt for Samples” to Jeni Dunn, Product Coordinator for Oxisolv, for the sample collected.

21. Ms. Dunn signed the Receipt for Samples.

22. By her signature on the Receipt for Samples, Ms. Dunn indicated that she was an owner, operator, or agent of Oxisolv.

23. By her signature on the Receipt for Samples, Ms. Dunn indicated that all samples collected were from pesticide products that were packaged, labeled, and released for shipment.

24. In that **“OXISOLV WATER TREATMENT MICROBIOCIDe,”** EPA Reg. No. 6836-79-072156 was packaged, labeled, and released for shipment or sale, Respondent **“distributed or sold”** this pesticide product.

25. The EPA Registration Number shown on the **“OXISOLV WATER TREATMENT MICROBIOCIDe,”** from the sample collected during the October 9, 2002 inspection, is **“6836-79-072156.”**

26. The number **“072156,”** is Respondent’s Company Number.

27. The number **“072156,”** by its location in the EPA Registration Number as printed on the **“OXISOLV WATER TREATMENT MICROBIOCIDe,”** label indicates that Oxisolv is a supplemental distributor of Respondent’s registered pesticide product **“205m WATER TREATMENT MICROBIOCIDe,”** EPA Reg. No. 6836-79.

28. As set forth below, the label being used by Oxisolv for the pesticide product **“OXISOLV WATER TREATMENT MICROBIOCIDe,”** EPA Reg. No. 6836-79-072156, does not correspond to the U.S. EPA **“Accepted”** label of September 19, 1989, for Respondent’s registered pesticide product **“205m WATER TREATMENT MICROBIOCIDe,”** EPA Reg. No. 6836-79.

29. On or about October 9, 2002, Respondent distributed or sold the pesticide product **“OXISOLV WATER TREATMENT MICROBIOCIDe,”** EPA Reg. No. 6836-79-072156.

30. On or about October 9, 2002, the pesticide product label for “**OXISOLV WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79-072156 was misbranded as follows:

- a. Respondent had entirely deleted, from its label, the section, *“ENVIRONMENTAL HAZARDS,” This pesticide is toxic to fish. Do not apply in marine and/or estuarine oil fields. Do not discharge treated effluent into lakes, streams, ponds, or public waters unless in accordance with an NPDES permit. For guidance contact your regional office of the Environmental Protection Agency,* as it appears on the U.S. EPA “Accepted” label of September 19, 1989.
- b. Under the label heading “CONTAINER DISPOSAL,” Respondent had entirely deleted from its label, the statements, *“ Triple rinse (or equivalent) then offer for recycling or reconditioning or puncture and dispose of in a sanitary landfill or incineration or if allowed by state and local authorities by burning; if burned, stay out of smoke. Metal Container: triple rinse (or equivalent), then offer for recycling or reconditioning or dispose of in a sanitary landfill or by other procedures approved by state and local authorities.”* as it appears on the U.S. EPA “Accepted” label of September 19, 1989.

31. Therefore, on or about October 9, 2002, the pesticide product label for “**OXISOLV WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79-072156. was “misbranded,” according to Section 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. § 136(q)(1)(F) and (G).

### Civil Penalty

32. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$300. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, the Respondent's ability to pay the penalty and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$300 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251 - 7531

34. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Joseph Lukascyk (DT-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Jose C. de Leon (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604]

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay the civil penalty timely, U.S. EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws, and regulations.

41. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for FIFRA.

42. The terms of this CAFO bind Respondent and its successors, and assigns.

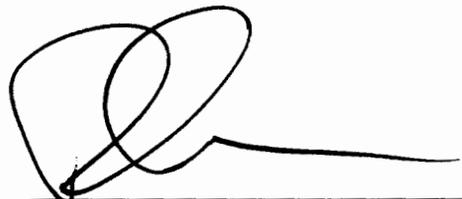
43. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorney's fees, in this action.

45. This CAFO constitutes the entire agreement between the parties.

**Oxisolv, Inc., Respondent**

9/27/07  
Date

  
Robert Levine, Chief Financial Officer

**United States Environmental Protection Agency, Complainant**

10/4/07  
Date

  
Margaret M. Guerriero, Director  
Land and Chemicals Division

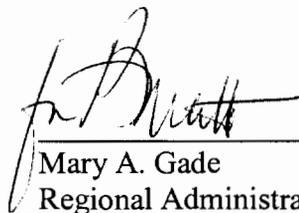
**FIFRA-05-2008-0001**

**In the Matter of:**  
**Oxisolv, Inc**  
**Docket No. FIFRA-05-2008-0001**

**Final Order**

This Consent Agreement, as agreed to by the parties, shall become a final order effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-09-07  
Date

  
\_\_\_\_\_  
Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Oxisolv, Inc, was filed on October 12, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 8153, a copy of the original to the Respondents:

Robert Levine, Chief Financial Officer  
Oxisolv, Inc.  
14916 Telegraph Road  
Suite 6  
Flat Rock, Michigan 48134

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Nidhi K. O'Meara, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
\_\_\_\_\_

Elizabeth Lytle  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2008-0001**